

*Ym*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA and  
THE STATE OF ILLINOIS,

Plaintiffs,

v.

CITY OF WAUKEGAN, ELGIN, JOLIET  
AND EASTERN RAILWAY COMPANY,  
MOTORS LIQUIDATION COMPANY  
(f/k/a GENERAL MOTORS  
CORPORATION), LARSEN MARINE  
SERVICES, INC. and THE NORTH  
SHORE GAS COMPANY,

Defendants.

US EPA RECORDS CENTER REGION 5



409178

CIVIL ACTION NO. 04C 5172

**AMENDMENT TO CONSENT DECREE**

*U*

## TABLE OF CONTENTS

|       |  |    |
|-------|--|----|
| I.    | Definitions .....  | 3  |
| II.   | Westchester Is Bound .....                                   | 5  |
| III.  | Completion of Work .....                                     | 6  |
|       | A. Catch-Up Payment .....                                    | 6  |
|       | B. Monthly Payments .....                                    | 7  |
|       | C. Accelerated Payment .....                                 | 8  |
|       | D. Effect of Unauthorized Payment .....                      | 10 |
| IV.   | Termination of Westchester's Obligations .....               | 11 |
| V.    | Notices and Submissions .....                                | 11 |
| VI.   | Trust to be Established by Westchester .....                 | 13 |
| VII.  | Savings Clause .....   | 15 |
| VIII. | Lodging and Opportunity for Public Comment .....             | 15 |
| IX.   | Effective Date of this Amendment to the Consent Decree ..... | 16 |
| X.    | Order .....  | 16 |

WHEREAS, the United States of America (hereinafter the "United States"), the State of Illinois, the City of Waukegan, the Gary Railway Company (formerly known as Elgin, Joliet, Eastern Railway, hereinafter "EJ&E Railway"), Motors Liquidation Company (formerly known as General Motors Corporation, hereinafter "General Motors" or "GM"), Larsen Marine Services, Inc. and North Shore Gas Company (hereinafter "NSG") are parties to a Remedial Action Consent Decree entered by this Court on October 13, 2004 (hereinafter the "Original Consent Decree") and relating to the Waukegan Manufactured Gas and Coke Plant Site (hereinafter the "Site"), Operable Unit 2 of the Outboard Marine Corporation Superfund Site, in Waukegan, Illinois; and

WHEREAS, GM and NSG are "Performing Settling Defendants" as defined under Section IV of the Original Consent Decree; and

WHEREAS, concurrently with the execution of the Original Consent Decree, GM and NSG entered into a Participation Agreement which provided for the equal sharing of costs incurred by or on behalf of GM and NSG at the Site pursuant to the Original Consent Decree; and

WHEREAS, on October 30, 2006, Westchester Fire Insurance Company (hereinafter "Westchester"), as Surety, and GM, as Principal, executed Performance Bond K07489286 (hereinafter the "Performance Bond") for the benefit of the United States Environmental Protection Agency (hereinafter "U.S. EPA"), as Beneficiary, in the amount of \$10,500,000 as financial assurance for GM's performance of all work as defined under Section IV of the Original Consent Decree (hereinafter "Work"); and

WHEREAS, on June 1, 2009, GM filed for bankruptcy under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (hereinafter "Bankruptcy Court"); and

WHEREAS, on June 9, 2009, GM notified U.S. EPA that GM had filed for bankruptcy; and

WHEREAS, on June 11, 2009, GM notified NSG that GM would not pay any outstanding or future Site assessments pursuant to the Participation Agreement relating to the Original Consent Decree; and

WHEREAS, on July 7, 2009, the Bankruptcy Court approved the sale of the majority of then GM's assets to a new entity to be named General Motors Company (hereinafter "New GM"); and

WHEREAS, while New GM agreed to assume certain liabilities of GM, such assumed liabilities did not include GM's liabilities at the Site; and

WHEREAS, since the date of GM's bankruptcy filing, NSG has paid and continues to pay all costs incurred pursuant to the Original Consent Decree, including the fifty percent (50%) share of Site costs that GM agreed to pay under the Participation Agreement; and

WHEREAS, by letter dated September 2, 2009, U.S. EPA notified Westchester in accordance with Paragraph 3 of the Performance Bond that GM had failed to perform Work required under the Original Consent Decree, and

WHEREAS, Westchester responded to this notification by informing U.S. EPA that in accordance with Paragraph 3(a) of the Performance Bond, Westchester would complete and takeover GM's obligations under the Original Consent Decree in accordance with the Performance Bond up to a maximum expenditure of \$10,500,000, and

WHEREAS, all signatories to the Original Consent Decree, other than GM, desire to amend the Original Consent Decree so as to add Westchester as a signatory for the purpose of performing its obligations under the Performance Bond;

NOW, THEREFORE, the United States, the State of Illinois, the City of Waukegan, NSG, EJ&E Railway, Larsen Marine Services, Inc. and Westchester hereby agree that, upon approval of this Amendment to Consent Decree (together with the Attachment hereto, hereinafter the "Amendment") by this Court, the Original Consent Decree shall be amended as follows:

**I. DEFINITIONS**

1. Unless otherwise expressly provided herein, terms used in this Amendment that are defined in the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 101 *et seq.*, in regulations promulgated under CERCLA, or in the Original Consent Decree shall have the meaning assigned to them in CERCLA, in such regulations or in the Original Consent Decree, as the case may be.

a. "Aggregate Amount Paid by Westchester for Work" shall mean the sum total of authorized payments made by Westchester, or caused to be made by Westchester, in accordance with the procedures set forth in Section III (Completion of Work) of this Amendment for Work performed, or to be performed, at the Site, but not including any payments made by Westchester, or caused to be made by Westchester, in accordance with the procedures in Section VI (Trust to be Established by Westchester) of this Amendment for taxes owed by the Trust, administrative expenses incurred by the Trustee, or interest, dividends or earnings paid to Westchester from the Trust;

b. "Amendment" shall have the same meaning as set forth in the recitals;

c. "Bankruptcy Court" shall have the same meaning as set forth in the recitals;

d. "Business Day" shall mean any day other than a Saturday or a Sunday or a federal holiday;

e. "Consent Decree" shall mean the Original Consent Decree entered by the Court on October 13, 2004, as amended by this Amendment;

f. "Day" shall have the same meaning as it does under Section IV of the Original Consent Decree

g. "Effective Date of this Amendment" shall mean the date upon which this Amendment is entered as an order of this Court, as set forth in Section VIII of this Amendment;

h. "General Motors Corporation" or "GM" shall have the same meaning as set forth in the recitals, and is the Delaware corporation that signed the Original Consent Decree on June 9, 2004;

i. "NSG Itemized Cost Summary" shall mean the statement of costs incurred by NSG pursuant to the Consent Decree, together with all invoices and other cost documentation necessary to support the statement of costs;

j. "New GM" shall have the same meaning as set forth in the recitals, which entity purchased substantially all of the assets of General Motors Corporation on July 10, 2009 (including the name General Motors Corporation), but did not assume liability for the Site;

k. "NSG" shall have the same meaning as set forth in the recitals;

l. "Original Consent Decree" shall mean the text of the Consent Decree, including attachments thereto, as entered by this Court on October 13, 2004, prior to any amendment thereto; to the extent that any provision of the Original Consent Decree refers to "General Motors Corporation," it is understood that the Party referred to is now known as Motors Liquidation Company and is referred to herein as "GM" or "General Motors Corporation;"

m. "Participation Agreement" shall mean the agreement executed by GM and NSG concurrently with the execution of the Original Consent Decree under which GM and NSG agreed among themselves to split the costs of the Work on a 50/50 basis;

n. "Performance Bond" shall have the same meaning as set forth in the recitals;

o. "Performing Settling Defendants" shall have the same meaning as set forth in the recitals;

p. "Site" shall have the same meaning as set forth in the recitals and as the term "Waukegan Manufactured Gas and Coke Plant Site (WMG & CP Site)" in Section I.B and Section IV of the Original Consent Decree;

q. "Trust" shall have the same meaning as set forth in Paragraph 27 of this Amendment;

r. "Trustee" shall mean Wells Fargo, N.A. (or any successor trustee), the trustee of the Trust which Westchester is required to establish under Section VI (Trust to Be Established by Westchester) under this Amendment;

s. "Westchester" shall mean the New York Corporation, known as Westchester Fire Insurance Company, which is the surety under the Performance Bond;

t. "Westchester's Outstanding Liability under the Performance Bond" shall mean the difference between (1) \$10,500,000 and (2) the Aggregate Amount Paid by Westchester for Work as defined in subparagraph "a" of this Paragraph;

u. "Work" shall have the same meaning as set forth in the recitals.

## **II. WESTCHESTER IS BOUND**

2. Westchester is hereby added as a party to the Original Consent Decree. Any and all provisions in the Original Consent Decree pertaining to the rights and obligations of GM in

performing, financing and completing the Work shall now apply with equal force and effect to Westchester.

3. Notwithstanding the previous paragraph, Westchester's liability under the Consent Decree and the Performance Bond is capped at \$10,500,000. When the Aggregate Amount Paid by Westchester for Work is equal to \$10,500,000, Westchester shall submit to U.S. EPA, with a courtesy copy to NSG and the State of Illinois, a request for termination under Section IV (Termination of Westchester's Obligations) of this Amendment.

4. Nothing in this Amendment is intended to modify or amend the Participation Agreement between GM and NSG. The Participation Agreement is not part of the Consent Decree and is not binding upon the United States.

### **III. COMPLETION OF WORK**

5. Westchester shall make, or cause the Trust to make, the payments set forth in Subsections A, B and C, below.

#### **A. Catch-Up Payment**

6. Within 30 Days after the Effective Date of this Amendment, NSG shall prepare and submit to Westchester a NSG Itemized Cost Summary detailing the invoices that NSG has paid under the Original Consent Decree from June 1, 2009 until the Effective Date of this Amendment.

7. Concurrently with sending such Itemized Cost Summary to Westchester, NSG shall send a copy of the Itemized Cost Summary to U.S. EPA for its review and approval, with a copy to the State of Illinois.

8. U.S. EPA shall approve, in whole or in part, or disapprove the Itemized Cost Summary within 30 Days of its receipt, and shall inform NSG and Westchester of its



determination within the 30 Day period by providing notice in accordance with Section V (Notices and Submissions) of this Amendment.

9. Except as provided below in Section III.C (Accelerated Payment) of this Amendment, Westchester shall make, or cause the Trust to make, payment to NSG, no later than 15 Days from the date of its receipt of U.S. EPA's approval, of 50% of the cost amount approved by U.S. EPA, but in no event more than Westchester's Outstanding Liability under the Performance Bond at such time.

10. Under no circumstances shall Westchester make, or cause the Trust to make, a payment to NSG in advance of receiving U.S. EPA's notice of approval of all or a part of the above-referenced NSG Itemized Cost Summary.

**B. Monthly Payments**

11. No later than 90 days after the Effective Date of the Amendment, NSG shall prepare and submit to Westchester a NSG Itemized Cost Summary detailing the costs that NSG has incurred under the Original Consent Decree from the first Day after the Effective Date of the Amendment through the end on the first full month after the Effective Date of the Amendment.

12. After preparing and submitting the NSG Itemized Cost Summary required under Paragraph 11, above, NSG shall thereafter, on a monthly basis, prepare and submit to Westchester a NSG Itemized Cost Summary detailing the costs that NSG has incurred under the Consent Decree for each subsequent month following the first full month after the Effective Date of the Amendment. NSG shall continue to prepare and submit such itemized cost summaries until U.S. EPA (i) determines in accordance with Section IV (Termination of Westchester's Obligations) of this Amendment that the Aggregate Amount Paid by Westchester for Work equals \$10,500,000, (ii) exercises its right to Accelerate Payment under

Section III.C (Accelerated Payment) of this Amendment, or (iii) certifies completion of the Work under Paragraph 50.b of the Original Consent Decree.

13. Concurrently with preparing and submitting a NSG Itemized Cost Summary to Westchester under this Section III.B (Monthly Payments), NSG shall send a copy of such itemized cost summary to U.S. EPA for its review and approval, with a copy to the State of Illinois. Each NSG Itemized Cost Summary shall also be accompanied by a statement, prepared by NSG, documenting the date and amount of each payment that it has received from Westchester or the Trust.

14. U.S. EPA shall approve, in whole or in part, or disapprove each NSG Itemized Cost Summary within 30 Days of its receipt, and shall inform NSG and Westchester of its determination within the 30 Day period by providing notice in accordance with Section V (Notices and Submissions) of this Amendment.

15. Except as provided below in Section III.C (Accelerated Payment) of this Amendment, Westchester shall make, or cause the Trust to make, payment to NSG, no later than 15 Days from the date of its receipt of U.S. EPA's approval, of 50% of the cost amount approved by U.S. EPA, but in no event more than Westchester's Outstanding Liability under the Performance Bond at such time.

16. Under no circumstances shall Westchester make, or cause the Trust to make, a payment to NSG in advance of receiving U.S. EPA's notice of approval of all or a part of the NSG Itemized Cost Summary relating to such payment.

**C. Accelerated Payment**

17. In the event that U.S. EPA takes over any Work pursuant to Paragraph 86 of the Original Consent Decree, U.S. EPA may issue a written demand for Westchester to make payment in an amount equal to Westchester's Outstanding Liability under the Performance

Bond. U.S. EPA may issue such written demand to Westchester in accordance with the notice provision in Section V (Notices and Submissions) of this Amendment. Concurrently with providing such notice to Westchester, U.S. EPA shall also provide notice to NSG, with a copy to the State of Illinois, in accordance with the notice provision in Section V (Notices and Submissions) of this Amendment.

18. Within 30 days of receiving U.S. EPA's written demand for accelerated payment under Paragraph 17, above, Westchester shall make, or cause the Trust to make, payment in such amounts and to such person(s), account(s), or otherwise as U.S. EPA may direct in its written demand or in any subsequent demand, up to the amount of Westchester's Outstanding Liability under the Performance Bond.

19. At any time Westchester may elect to pay an amount equal to Westchester's Outstanding Liability under the Performance Bond. In the event that Westchester elects to exercise its right under this Paragraph, Westchester shall make, or cause the Trust to make, such payment in such amounts and to such person(s), account(s), or otherwise as U.S. EPA may direct up to the amount of Westchester's Outstanding Liability under the Performance Bond. Upon making payment(s) under this Paragraph 19 or the preceding Paragraph 18 equal in amount to Westchester's Outstanding Liability under the Performance Bond, Westchester shall submit to U.S. EPA, with a copy to NSG and the State of Illinois, a request for termination under Section IV (Termination of Westchester's Obligations) of this Amendment.

20. Obligations in the Event that U.S. EPA Elects to Accelerate Payment:

a. Westchester shall not make, or cause the Trust to make, any payment to NSG after receiving written notice from U.S. EPA of its election to accelerate payment in accordance

with this Section III.C (Accelerated Payment). This obligation shall apply even if U.S. EPA has previously approved all or part of a NSG Itemized Cost Summary.

b. After Westchester receives a written notice from U.S. EPA of its election to accelerate payment, Westchester shall, within one Business Day of receipt of such notice, send instructions to the Trustee directing it not to make any further payments to NSG from the Trust, including any payments that Westchester previously instructed the Trustee to pay to NSG.

c. Notwithstanding subparagraph "a" and "b" of this Paragraph, any payment made by the Trust to NSG shall be deemed to have been "authorized" for the purposes of calculating the Aggregate Amount Paid by Westchester for Work where (i) the payment was made within 2 Business Days of U.S. EPA providing notice to Westchester of its election to accelerate payments in accordance with Paragraph 17 and (ii) the payment was mistakenly made despite Westchester's good faith efforts to comply with the requirements of subparagraphs "a" and "b" of this Paragraph.

d. NSG shall return to the Trust any payment that it receives on or after the Day that U.S. EPA provides notice to Westchester of U.S. EPA's intent to accelerate payments under this Section. Upon return of the payment to the Trust, the payment amount shall not be included in the Aggregate Amount Paid by Westchester for Work.

**D. Effect of Unauthorized Payment to NSG**

21. In the event that Westchester makes, or causes the Trust to make, an unauthorized payment to NSG in violation of the procedures set forth in this Section III (Completion of Work) of the Amendment, such payment shall not be included in the Aggregate Amount Paid by Westchester for Work, nor shall it be applied against the \$10,500,000 cap in the Performance Bond, except when the conditions set forth in Paragraph 20.c are satisfied.

22. U.S. EPA may or may not ratify an unauthorized payment at its unreviewable discretion. In the event that U.S. EPA elects to ratify the unauthorized payment, the limitations set forth in the preceding Paragraph 21 shall not apply and the payment may be included in the Aggregate Amount Paid by Westchester for Work, as well as applied as reduction of the debt owed by Westchester under the Performance Bond.

**IV. TERMINATION OF WESTCHESTER'S OBLIGATIONS**

23. After the Aggregate Amount Paid by Westchester for Work equals \$10,500,000, Westchester shall submit to U.S. EPA, with a copy to NSG and the State of Illinois, a request for termination, stating that Westchester has satisfied its obligation under the Performance Bond and this Amendment, together with all necessary supporting documentation.

24. Following receipt by U.S. EPA of Westchester's request for termination, U.S. EPA and Westchester shall confer informally concerning the request and any disagreement that they may have as to whether Westchester has satisfactorily complied with the requirements for termination of this Consent Decree. If the U.S. EPA agrees that the Aggregate Amount Paid by Westchester for Work equals \$10,500,000, the United States shall submit a notice to the Court stating that Westchester's obligations under this Amendment and the Performance Bond are terminated.

**V. NOTICES AND SUBMISSIONS**

25. Section XXVI (Notices and Submissions) of the Original Consent Decree is hereby modified as set forth in Paragraph 26, below.

26. Whenever notice is required be given, or a document is required to be sent, under the terms of this Amendment, it shall be directed to the individuals at the email addresses specified below, unless such an individual or his or her successor gives notice of a change to

the contact information set forth below. All notices and submissions shall be considered effective upon receipt, unless otherwise provided.

As to the United States and U.S. EPA

Kevin Adler  
Remedial Project Manager  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard (SR-6J)  
Chicago, Illinois 60604  
(312) 886-7078  
Adler.Kevin@epa.gov

Susan Tennenbaum  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard (C-14J)  
Chicago, Illinois 60604  
(312) 886-0273  
Tennenbaum.Susan@epa.gov

As to Westchester

Henry R. Minissale  
Vice President  
ACE USA  
436 Walnut Street  
Routing Code WA10A  
Philadelphia, PA 19106  
(215) 640-2641  
henry.minissale@acegroup.com

Robert McL. Boote  
Ballard Spar, LLP  
1735 Market Street - 51st Floor  
Philadelphia, PA 19103-7599  
(215) 864-8231  
boote@ballardspahr.com

As to NSG

Brian F. Bartoszek, P.E.  
Manager - Remediation & Solid Waste  
Integrus Business Support, LLC  
700 N Adams Street  
Green Bay, WI 54307-9001  
Phone: (920) 433-2643  
bfbartoszek@integrusgroup.com

Timothy P. Walsh  
Senior Counsel  
Integrus Business Support, LLC  
130 E. Randolph Street  
Chicago, IL 60601  
Phone: (312) 240-4454  
tpwalsh@integrusgroup.com

As to the State of Illinois

Erin Rednour  
Bureau of Land  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276  
(217) 785-8725  
Erin.Rednour@illinois.gov

**VI. TRUST TO BE ESTABLISHED BY WESTCHESTER**

27. In fulfillment of its obligations under Section XIII of the Original Consent Decree (Assurance of Ability to Complete Work), Westchester shall establish a trust fund ("Trust") in the amount of \$10,500,000 within 30 days of the Effective Date of this Amendment. U.S. EPA shall be the sole beneficiary of the Trust, and Westchester shall assure that the Trust is unencumbered by any liens or claims of third parties. The Trust shall be memorialized by, and subject to, a trust agreement that is substantially in the same form as the trust agreement at Attachment A (as amended, supplemented or otherwise modified from time to time, subject to the approval of U.S. EPA, the "Trust Agreement").

28. Westchester shall always maintain a balance in the Trust that is, at all times, greater than or equal to the Westchester's Outstanding Liability under the Performance Bond. In the event that the balance in the Trust falls below Westchester's Outstanding Liability under the Performance Bond, Westchester shall promptly upon becoming aware thereof notify U.S. EPA of this fact and shall promptly deposit additional funding in the Trust to cover this shortfall. Any and all taxes and/or administrative expenses assessed or levied against or with respect to the Trust shall be paid from the Trust, but such payments shall not be included in the Aggregate Amount Paid by Westchester for Work, nor shall such payments reduce Westchester's Outstanding Liability under the Performance Bond. Westchester shall provide to U.S. EPA a biannual accounting of all payments made from the Trust, including payments to NSG for reimbursement for Work, payments of taxes levied against the trust, payments of administrative expenses incurred by the Trust, and payment of interest, dividends or earnings to Westchester.

29. Except as provided in Section III.C (Accelerated Payment) of this Amendment, Westchester may use funds in the Trust to make payments to NSG authorized by U.S. EPA in accordance with the procedures in Section III.A (Catch-Up Payments) and Section III.B (Monthly Payments) of this Amendment. Accordingly, if U.S. EPA has approved of all or any portion of the cost amount in a NSG Itemized Cost Summary prepared by NSG, Westchester may issue a payment instruction to the Trustee, directing the Trustee to make payment of the authorized amount from the Trust to NSG, although Westchester shall countermand that instruction in accordance with Paragraph 20.b. in the event that U.S. EPA provides notice of its intent to accelerate payment under Section III.C (Accelerated Payment) of this Amendment.



30. Upon written notice from U.S. EPA of its election to accelerate payment under Section III.C (Accelerated Payment) of this Amendment, Westchester may issue payment instructions to the Trustee directing the Trustee to make payment(s) of the authorized amount from the Trust to U.S. EPA in accordance with Paragraph 18.

31. Westchester may also instruct the Trustee to pay interest, dividends and earnings on the funds in the Trust to Westchester for its own account pursuant to the Trust Agreement on a biannual basis. No such payments shall be made to Westchester, however, where they would reduce the balance in Trust to an amount less than Westchester's Outstanding Liability under the Performance Bond. Not less than 30 Days prior to issuing an instruction to the Trustee directing it to make payments from the Trust to Westchester, Westchester shall submit to U.S. EPA an accounting of the Trust, as set forth in Paragraph 28, above. In the event that U.S. EPA objects to the payment of interest, dividends or earnings from the Trust to Westchester by providing notice in accordance with Section V (Notices and Submissions) of this Amendment, Westchester shall not instruct the Trustee to make any payments from the Trust to Westchester, unless Westchester can demonstrate that such payments will not reduce the balance in the Trust to an amount less than Westchester's Outstanding Liability under the Performance Bond.

#### **VII. SAVINGS CLAUSE**

32. Nothing in this Amendment modifies or amends the rights and obligations of the parties under the Original Consent Decree.

#### **VIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

33. **Lodging**: This Amendment shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right

to withdraw or withhold its consent if the comments regarding the Amendment disclose facts or considerations which indicate that the Amendment is inappropriate, improper, or inadequate. The parties hereto consent to the entry of this Amendment without further notice.

34. Agreement Voidable if Not Entered by the Court: If for any reason the Court should decline to approve this Amendment in the form presented, this Amendment is voidable at the sole discretion of any party and, if voided, the terms of this Amendment may not be used as evidence in any litigation between the parties.

**IX. EFFECTIVE DATE OF THIS AMENDMENT TO THE CONSENT DECREE**

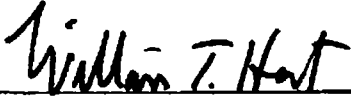
35. This Amendment shall be effective upon execution by the United States District Judge assigned to this matter as set forth below and upon entry on the docket of the U.S. District Court for Northern District of Illinois.

**X. ORDER**

Before the taking of any testimony, without adjudication of any issue of fact or law, and upon the consent and agreement of the Parties, it is:

ORDERED, ADJUDGED and DECREED that this Amendment to the Consent Decree is hereby approved and entered as a final order of this Court.


Dated and entered this 13<sup>TH</sup> day of JUNE, 2011

  
\_\_\_\_\_  
United States District Court  
Northern District of Illinois

THE UNDERSIGNED PARTY joins in this Amendment to the Consent Decree entered  
in *United States, et al. v. City of Waukegan, et al.*, Civil Action No. 04C 5172.

FOR PLAINTIFF UNITED STATES OF AMERICA

Date: 3/17/11

  
\_\_\_\_\_  
ROBERT G. DREHER  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20002

JOSEPH W.C. WARREN  
Trial Attorney  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20002

PATRICK FITZGERALD  
United States Attorney  
Northern District of Illinois

\_\_\_\_\_  
KURT N. LINDLAND  
Assistant United States Attorney  
Northern District of Illinois  
219 South Dearborn Street, 5<sup>th</sup> Floor  
Chicago, IL 60604

SUSAN M. TENNENBAUM  
Associate Regional Counsel  
U.S. Environmental Protection Agency,  
Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

THE UNDERSIGNED PARTY joins in this Amendment to the Consent Decree entered  
in *United States, et al. v. City of Waukegan, et al.*, Civil Action No. 04C 5172.

FOR PLAINTIFF UNITED STATES OF AMERICA

Date: \_\_\_\_\_

IGNACIA S. MORENO  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20002

JOSEPH W.C. WARREN  
Trial Attorney  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20002

PATRICK FITZGERALD  
United States Attorney  
Northern District of Illinois

For the U.S. Environmental Protection Agency



RICHARD C. KARL  
Director of Superfund Division  
U.S. Environmental Protection Agency,  
Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

SUSAN M. TENNENBAUM  
Associate Regional Counsel  
U.S. Environmental Protection Agency,  
Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

THE UNDERSIGNED PARTY joins in this Amendment to the Consent Decree entered  
in *United States, et al. v. City of Waukegan, et al.*, Civil Action No. 04C 5172.

FOR PLAINTIFF THE STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS  
*ex rel.* LISA MADIGAN  
Attorney General of the  
State of Illinois

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

MATTHEW J. DUNN, Chief  
Environmental Enforcement  
Asbestos Litigation Division

DOUGLAS P. SCOTT, Director  
Illinois Environmental Protection Agency

BY: Rose Marie Cazeau (aw)  
ROSEMARIE CAZEAU, Chief  
Assistant Attorney General  
Environmental Bureau

BY: [Signature]  
JOHN J. KIM  
Chief Legal Counsel

DATE: 12/21/10

DATE: 12/17/10

WE HEREBY CONSENT to the foregoing Stipulated Amended to the Consent Decree  
entered in *United States, et al. v. City of Waukegan, et al.*, Civil Action No. 04C 5172.  
FOR CITY OF WAUKEGAN

Date: 10-11-10

By: Robert Sabonjian  
Robert Sabonjian, Mayor

**THE UNDERSIGNED PARTY joins in this Amendment to the Consent Decree entered  
in *United States, et al. v. City of Waukegan, et al.*, Civil Action No. 04C 5172.**

**FOR GARY RAILWAY COMPANY (f/k/a ELGIN, JOLIET, EASTERN RAILWAY  
COMPANY)**

Date: November 15, 2010



**ANDREW G. THEROS  
Attorney - Environmental  
United States Steel Corporation  
Suite 1500  
600 Grant Street  
Pittsburgh, PA 15219-2800**

THE UNDERSIGNED PARTY joins in this Amendment to the Consent Decree entered  
in *United States, et al. v. City of Waukegan, et al.*, Civil Action No. 04C 5172.

FOR THE DEFENDANT LARSEN MARINE SERVICES, INC.

Date: 11-15-2010



JERRY LARSEN

President

Larsen Marine Service, Inc.

625 Seahorse Drive

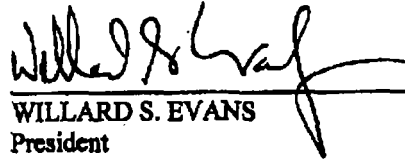
Waukegan, IL 60085



THE UNDERSIGNED PARTY joins in this Amendment to the Consent Decree entered  
in *United States, et al. v. City of Waukegan, et al., Civil Action No. 04C 5172.*

FOR DEFENDANT NORTH SHORE GAS COMPANY


Date: November 12, 2010

  
\_\_\_\_\_  
WILLARD S. EVANS  
President  
North Shore Gas Company  
130 E. Randolph Drive  
Chicago, IL 60601

THE UNDERSIGNED PARTY joins in this Amendment to the Consent Decree entered  
in *United States, et al. v. City of Waukegan, et al.*, Civil Action No. 04C 5172.

FOR WESTCHESTER FIRE INSURANCE COMPANY

Date: 11/30/10

By:   
HENRY R. MINISSALE  
Vice President  
ACE USA  
436 Walnut Street  
Philadelphia, PA 19106

**TRUST AGREEMENT**

Outboard Marine Corporation Superfund Site  
Operable Unit 2 (Waukegan Manufactured Gas and Coke Plant Site)

Dated: \_\_\_\_\_

This Trust Agreement (the "Agreement") is entered into as of [date] by and between Westchester Fire Insurance Company ("Grantor"), a corporation organized and existing under the laws of the State of New York, and Wells Fargo Bank, National Association, a national banking association organized and existing under the laws of the United States of America, as trustee ("Trustee").

Whereas, Grantor is a party to a Remedial Action Consent Decree in the matter of United States et al. v. City of Waukegan et al., Civil Action No. 04C-5172 (N.D. Ill.) ("the Consent Decree"), as subsequently amended (the "Amended Consent Decree") in connection with the Waukegan Manufactured Gas and Coke Site, Operable Unit 2 of the Outboard Marine Corporation Superfund Site;

Whereas, the Amended Consent Decree provides that the Grantor shall provide assurance of its ability to complete the Work required under the Amended Consent Decree by establishing and maintaining a trust fund in the amount of \$10.5 million;

Whereas, in order to provide such financial assurance, Grantor has agreed to establish and fund the Trust created by this Agreement; and

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee has agreed to act as trustee hereunder.

Now, therefore, the Grantor and the Trustee agree as follows:

***Section 1. Definitions.*** As used in this Agreement:

- (a) The term "Amended Consent Decree" shall have the meaning assigned thereto in the recitals of this Agreement;
- (b) "Beneficiary" shall have the meaning assigned thereto in Section 3 of this Agreement;
- (c) The term "Business Day" means any day, other than a Saturday or a Sunday or a federal holiday, that banks are open for business in the Commonwealth of Pennsylvania, USA;
- (d) The term "Fund" shall have the meaning assigned thereto in Section 3 of this Agreement;
- (e) The term "Grantor" shall have the meaning assigned thereto in the first paragraph of this Agreement;

(f) The term "Objection Notice" shall have the meaning assigned thereto in Section 4(A)(3) of this Agreement;

(g) The term "Payment Certificate" and "Payment Instruction" shall have the meaning assigned thereto in Section 4(A)(2) and Section 4(A)(1) of this Agreement, respectively;

(h) The term "Site" shall have the meaning assigned thereto in Section 2 of this Agreement;

(i) The term "Trust" shall have the meaning assigned thereto in Section 3 of this Agreement;

(j) The term "Trustee" shall mean the trustee identified in the first paragraph of this Agreement, along with any successor trustee appointed pursuant to the terms of this Agreement, and

(k) The term "Work" shall have the meaning assigned thereto in the Amended Consent Decree.

**Section 2. Identification of Facilities and Costs.** This Agreement pertains to costs for Work required at the Waukegan Manufactured Gas and Coke Plant Site, Operable Unit 2 of the Outboard Marine Corporation Superfund Site, in Lake County, Illinois (the "Site"), pursuant to the Amended Consent Decree.

**Section 3. Establishment of Trust Fund.** The Grantor and the Trustee hereby establish a trust (the "Trust"), for the benefit of the United States Environmental Protection Agency, Region 5 ("U.S. EPA" or the "Beneficiary"), to assure that funds are available to pay for performance of the Work in the event that Grantor fails or is unable to conduct or complete the Work required by, and in accordance with the terms of, the Amended Consent Decree. No third party shall have access to monies or other property in the Trust except as expressly provided herein. The Trust is established initially as consisting of funds in the amount of ten million five hundred thousand U.S. Dollars (\$10,500,000). Such funds, along with any other monies and/or other property hereafter deposited into the Trust, and together with all earnings and profits thereon, are referred to herein collectively as the "Fund." The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. Notwithstanding that the Fund shall include earnings and profits, Grantor shall be entitled to withdraw any such earnings and profits or other amounts as provided in Section 6 of this Agreement. Although such earnings and profits may be paid from the Fund, these payments will not decrease the Grantor's Outstanding Liability. The Trustee shall not be responsible, nor shall it undertake any responsibility, for (i) the amount or adequacy of any payments necessary to discharge any liabilities of the Grantor owed to the United States under the Amended Consent Decree or (ii) the collection from the Grantor of any such payments.

**Section 4. Payment for Work Required Under the Consent Decree.** The Trustee shall make payments from the Fund in accordance with the following procedures.

**A) Standard Payment Procedures**

(1) The Grantor and/or its duly authorized representative may instruct the Trustee to make payment from the Fund for Work performed under the Amended Consent Decree by delivering to the Trustee, with a copy to U.S. EPA and to North Shore Gas Company as provided in Section 20, below, a written payment instruction ("Payment Instruction") identifying the payee, the amount of the payment, and any other information necessary to effectuate the payment.

(2) The Payment Instruction shall include a certificate ("Payment Certificate") signed by an officer of the Grantor (or its authorized representative) identifying the time period of the Work covered by the Payment Instruction and certifying that (i) the payment is for Work performed at the Site in accordance with the Amended Consent Decree, and (ii) the payment has been approved by U.S. EPA in accordance with the procedures set forth in the Amended Consent Decree;

(3) If the Trustee receives Payment Instruction, together with the Payment Certificate, and does not receive a written notice the Grantor withdrawing or countermanding the Payment Instruction ("Objection Notice"), the Trustee shall make the payment from the Fund in accordance with the Payment Instruction. The Trust shall make such payment no later than five Business Days after its receipt of the Payment Instruction and Payment Certificate.

(4) If the Trustee receives an Objection Notice from the Grantor, the Trustee shall not make any payment from the Fund until it receives a new or revised Payment Instruction, together with a new or revised Payment Certificate.

(5) All payments provided for in this section shall apply only to the Grantor's obligation for Work performed at the Site up to the maximum amount of \$10,500,000, and shall not include payments of taxes and administrative expenses incurred by the Trust.

**B) Special Payment Procedures**

(1) The Standard Payment Procedures in Section 4.A shall no longer apply in event that (a) Grantor files for bankruptcy protection, (b) Grantor receives notice that its creditor has filed a petition for involuntary bankruptcy or (iii) Grantor defaults on its obligations under the Amended Consent Decree (collectively "Triggering Event"). Grantor shall provide notice to U.S. EPA, to North Shore Gas Company and to the Trustee of such a Triggering Event within two business days of the Triggering Event occurring.

(2) Upon receipt of notice of a Triggering Event from either U.S. EPA or Grantor, the Trustee shall make no further payments from the Trust pursuant to any Payment Instruction from Grantor, regardless of whether the Payment Instruction was received before or after the Triggering Event. Instead, the Trustee shall pay funds up to the Total Dollar Amount in such amounts and to such person(s), account(s) or otherwise as U.S. EPA may direct. For the purposes of this subparagraph (b), the term "Total Dollar Amount" shall mean the difference

between (i) \$10.5 million and (ii) the total payments that Trustee has made from the Fund pursuant to the Standard Payment Procedures in Section 4.A.

**Section 5. Trust Management.** The Trustee shall invest and reinvest the principal and income of the Trust and keep the Trust invested as a single fund, without distinction between principal and income, in accordance with directions which the Grantor may communicate in writing to the Trustee from time to time. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust solely in the interest of the Beneficiary and with the care, skill prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims, except that:

- (a) securities, notes, and other obligations of any person or entity shall not be acquired or held by the Trustee with monies comprising the Fund, unless they are securities, notes, or other obligations of the U.S. federal government or any U.S. state government or as otherwise permitted in writing by the U.S. EPA;
- (b) the Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent such deposits are insured by an agency of the U.S. federal or any U.S. state government; and
- (c) the Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

**Section 6. Dividends, Interest and Premiums.** Notwithstanding any limitation herein, including Section 4, above, the Grantor shall have the absolute right to receive all profits from trades and all cash dividends, earnings, interest and premiums declared and/or paid on or in respect of the Fund on a biannual basis upon written request therefore by the Grantor, made no earlier than thirty (30) days following each biannual valuation provided in section 10 hereof to the Grantor and the Beneficiary, provided that, after giving effect to such withdrawal, the market value of the Fund, as reasonably determined by the Trustee, shall not be less than the Grantor's Outstanding Liability under the Amendment to Consent Decree entered in *United States of American and The State of Illinois v. City of Waukegan, et al.*, Civil Action No. 04C 5172, on \_\_\_\_\_, 2010. As used herein, the term Outstanding Liability shall mean an amount equal to the difference between (a) \$10,500,000 and (b) an amount equal to the aggregate amount of all payments theretofore made by the Trustee pursuant to Section 4 hereof.

**Section 7. Commingling and Investment.** The Trustee is expressly authorized in its discretion to transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions hereof and thereof, to be commingled with the assets of other trusts participating therein.

**Section 8. Express Powers of Trustee.** Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) to make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(b) to register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry; or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities; or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person; or to deposit or arrange for the deposit of any securities issued by the U.S. federal government or any U.S. state government, or any agency or instrumentality thereof, with a Federal Reserve bank, provided that the books and records of the Trustee shall at all times show that all such securities are part of the Fund; and

(c) to deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the U.S. federal government.

**Section 9. Taxes and Expenses.** All taxes, expenses and charges of any kind that may be assessed or levied against or in respect of the Trust shall be paid from the Trust. Although such taxes, expenses and charges may be paid from the Trust, these deductions will not reduce the Grantor's Outstanding Liability, as defined in Section 6, above.

**Section 10. Semi-Annual Valuation.** The Trustee shall, starting no more than six months after the anniversary date of the establishment of the Trust, and every six months thereafter, furnish to the Grantor and to the Beneficiary a statement confirming the value of the Trust. Any securities in the Trust shall be valued at market value as of no more than 60 days prior to the date of each such statement. The semi-annual valuation shall include an accounting of any fees, expenses and taxes levied against the Fund. The Trustee shall also provide such information concerning the Fund and this Trust as U.S. EPA may request.

**Section 11. Advice of Counsel.** The Trustee may from time to time consult with counsel with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder; provided, however, that any counsel retained by the Trustee for such purposes may not, during the period of its representation of the Trustee, serve as counsel to the Grantor.

**Section 12. Trustee Compensation.** The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing with the Grantor and as notified in writing to the Beneficiary and shall be paid out of the Fund, but shall not reduce the Outstanding Liability of the Grantor, as defined in Section 6, above.

**Section 13. Trustee and Successor Trustee.** The Trustee and any replacement trustee must be approved in writing by U.S. EPA and must not be affiliated with the Grantor. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee approved in writing by

U.S. EPA and this successor accepts such appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Trust. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to U.S. EPA or a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the Fund and the Trust in a writing sent to the Grantor, the Beneficiary, North Shore Gas Company and the present Trustee by certified mail no less than 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid by the Grantor.

**Section 14. Instructions to the Trustee.** All instructions to the Trustee shall be in writing, signed by such persons as are empowered to act on behalf of the entity giving such instructions. The Trustee shall be fully protected in acting without inquiry on such written instructions given in accordance with the terms of this Agreement. The Trustee shall have no duty to act in the absence of such written instructions, except as expressly provided for herein.

**Section 15. Amendment of Agreement.** This Agreement may be amended only by an instrument in writing executed by the Grantor and the Trustee, and with the prior written consent of U.S. EPA.

**Section 16. Irrevocability and Termination.** This Trust shall be irrevocable and shall continue until terminated upon the earlier to occur of (a) U.S. EPA's certification of the completion of Work under Paragraph 50.b (Completion of Work) of the Original Consent Decree or (b) the termination of Grantor's obligations pursuant to Section IV (Termination of Westchester Obligations) of the Amendment to the Consent Decree. **Immunity and Indemnification.** The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the U.S. EPA issued in accordance with this Agreement. The Trustee shall be indemnified and held harmless by the Grantor from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct made by the Trustee in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

**Section 17. Choice of Law.** This Agreement shall be administered, construed, and enforced according to the laws of the Commonwealth of Pennsylvania.

**Section 18. Interpretation.** As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.



**Section 19. Notices.** All notices and other communications given under this agreement shall be in writing and shall be addressed to the parties as follows or to such other address as the parties shall by written notice designate:

- (a) If to the Grantor, to: Henry R. Minissale, Vice President  
ACE USA Claims  
436 Walnut Street  
Routing Code WA10A  
Philadelphia, PA 19106

and to

Robert McL. Boots, Esq.  
Ballard Spahr LLP  
1735 Market Street – 51st Floor  
Philadelphia, PA 19103-7599

- (b) If to the Trustee, to: Wells Fargo Bank, National Association  
Corporate Trust Services  
1600 John F Kennedy Blvd, Suite 810  
Philadelphia, PA 19103

- (c) If to U.S. EPA, to: Kevin Adler  
Remedial Project Manager  
U. S. EPA – Region 5  
77 West Jackson Blvd., SR-6J  
Chicago, IL 60604-3590  
Adler.kevin@epa.gov

and

Susan Tennenbaum  
Associate Regional Counsel  
U.S. EPA – Region 5  
77 West Jackson Blvd., C-14J  
Chicago, IL 60604-3590  
Tennenbaum.susan@epa.gov(close spacing)

- (d) If to North Shore Gas Company:

Brian F. Bartoszek, P.E.  
Manager - Remediation & Solid Waste  
Integritys Business Support, LLC  
700 N Adams Street  
Green Bay, WI 54307-9001  
Phone: (920) 433-2643  
bfbartoszek@integrysgroup.com

Timothy P. Walsh  
Senior Counsel  
Integrus Business Support, LLC  
130 E. Randolph Street  
Chicago, IL 60601  
Phone: (312) 240-4454  
tpwalsh@integrysgroup.com

(e) If to the State of Illinois:

Erin Rednour  
Bureau of Land  
NPL Unit  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East, P.O. Box 19276  
Springfield, IL 62794-9276  
217.785.8725  
Erin.Rednour@illinois.gov

[Remainder of page left blank intentionally.]

**In Witness Whereof**, the parties hereto have caused this Agreement to be executed by their respective officers duly authorized and attested as of the date first above written:

**GRANTOR**

**WESTCHESTER FIRE INSURANCE COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

State of \_\_\_\_\_  
County of \_\_\_\_\_

On this [date], before me personally came [name of Grantor official], to me known, who, being by me duly sworn, did depose and say that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; and that she/he signed her/his name thereto.

[Signature of Notary Public]

**TRUSTEE**

**WELLS FARGO BANK, NATIONAL ASSOCIATION, as trustee**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

State of \_\_\_\_\_  
County of \_\_\_\_\_

On this [date], before me personally came [name of Trustee official], to me known, who, being by me duly sworn, did depose and say that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; and that she/he signed her/his name thereto.

[Signature of Notary Public]